IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JALIL A. RASHEED	:	CIVIL ACTION
	:	
v.	:	
	:	
LANE COX, et al.	:	NO. 06-5017

MEMORANDUM

Bartle, C.J. May 3, 2006

Before the court is the motion of the defendants to dismiss the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Pro se plaintiff Jalil A. Rasheed ("Rasheed") filed a personal statement as a complaint against defendants Adappt, Inc., Lane Cox ("Cox") and Bill Tillman ("defendants"), pursuant to 42 U.S.C. § 1983. He alleges violations of his right to be free from cruel and unusual punishment protected by the Eighth Amendment to the United States Constitution.[1] Specifically, he alleges that on May 20, 2006, while a resident at Adappt's community facility, defendant Cox conducted a "pat down" search of plaintiff after the latter provided a urine sample. During this search, plaintiff alleges that Cox grabbed him in the neck and "penis" area. After plaintiff protested, defendant Cox informed Rasheed that he was performing the search properly and

1. In his personal statement, plaintiff does not allege that Adappt, Inc., or Tillman violated his constitutional rights in any way.

resumed the "pat down" search. When Cox touched plaintiff between his legs, plaintiff ended the search by walking away from Cox to request another staff member conduct the search. Cox then grabbed Rasheed around his chest and arms but released him when plaintiff asked him to do so.

Rasheed alleges defendant Cox used excessive force and sexually assaulted him in performing the "pat down" search and seeks "compulsory" and punitive damages in the amount of $1.5 million and the right to file a criminal complaint.[2]

I.

Under Rule 12(b)(6), a claim should be dismissed only where it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Cal. Pub. Employees' Ret. Sys. v. Chubb Corp., 394 F.3d 126, 143 (3d Cir. 2004). All well-pleaded allegations in the complaint must be accepted as true, and all reasonable inferences are drawn in favor of the non-moving party. Id. We may consider "the allegations contained in the complaint, exhibits attached thereto, and matters of public record." Beverly Enterprises, Inc. v. Trump, 182 F.3d 183, 190 n.3 (3d Cir. 1999); Pension Benefit Guar. Corp. v. White Consol. Indus. Inc., 998 F.2d 1192,

---

2. For purposes of this motion, we presume that the defendants are state actors for purposes of 42 U.S.C. § 1983. Neither party raises the issue whether plaintiff has complied with the requirements of the Prison Litigation Reform Act that he exhaust all administrative remedies. 42 U.S.C. § 1997e(a); see also Woodford v. Ngo, ___ U.S. ___, 126 S. Ct. 2378 (2006). The statute's exhaustion requirement is not jurisdictional. Woodford, ___ U.S. at ___, 126 S. Ct. at 2392.

1196 (3d Cir. 1993). Both the Supreme Court and our Court of Appeals have consistently held that pro se prisoner complaints must be read liberally. See Estelle v. Gamble, 429 U.S. 97, 106 (1976); Leamer v. Fauver, 288 F.3d 532, 547 (3d Cir. 2002). We may dismiss such a complaint only if "it appears beyond doubt" that the plaintiff "can prove no set of facts in support of the claim that would entitle him to relief." Leamer, 288 F.3d at 547.

The Supreme Court has explained that the "unnecessary and wanton infliction of pain" by prison officials is "cruel and unusual punishment" within the meaning of the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986). In order for a prisoner to hold a prison official liable for violating his Eighth Amendment rights under 42 U.S.C. § 1983, the injury or punishment must be "objectively, sufficiently serious" and the prison official must have a "sufficiently culpable state of mind." Farmer v. Brennan, 511 U.S. 825, 834 (1994); Beers-Capitol v. Whetzel, 256 F.3d 120, 125 (3d Cir. 2001). "Severe or repetitive sexual abuse of an inmate by a prison officer can be 'objectively, sufficiently serious' enough to constitute an Eighth Amendment violation." Boddie v. Schnieder, 105 F.3d 857, 861 (2d Cir. 1997).

Regarding his claim that Cox used excessive force, we must ask whether force was applied in a "good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Brooks v. Kyler, 204 F.3d 102, 106 (3d Cir.

2000) (quoting Hudson v. McMillian, 503 U.S. 1, 7 (1992)). In making this determination, our Court of Appeals has directed us to consider several factors: "(1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of the injury inflicted; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible officials on the basis of facts known to them; and (5) any efforts made to temper the severity of the forceful response." Smith v. Mensinger, 293 F.3d 641, 649 (3d Cir. 2002).

II.

Construed liberally, plaintiff's complaint alleges he was sexually assaulted and physically abused in violation of the Eighth Amendment on one occasion during a "pat down" search of his person. A guard purportedly touched his penis or groin area, grabbed him by the neck, and later placed him in some bear-hug or hold when he attempted to move away. While we do not condone or approve of any improper behavior by prison officials, the conduct alleged does not rise to the level of an Eighth Amendment violation. All improper or even inexcusable conduct against a prisoner is simply not a constitutional wrongdoing.

As noted above, sexual abuse by a prison officer may be "objectively, sufficiently serious" enough to constitute an Eighth Amendment violation if it is "severe or repetitive." Boddie, 105 F.3d at 861. This and other federal courts have held prisoner complaints that alleged more grievous sexual harassment

and abuse than alleged here did not state a claim under § 1983 for violation of the Eighth Amendment. See Harris v. Zappan, 1999 WL 360203 at *5 (E.D. Pa. May 28, 1999) (collecting cases); Jones v. Culinary Manager II, 30 F. Supp. 2d 491, 497 (E.D. Pa. 1998); Wright v. O'Hara, 2004 WL 1793018, *7 (E.D. Pa. Aug 11, 2004); Boddie, 105 F.3d at 861; Boxer X v. Harris, 437 F.3d 1107, 1111 (11th Cir. 2006); Berryhill v. Schriro, 137 F.3d 1073, 1076 (8th Cir. 1998).

Likewise, the "pat down" performed by defendant Cox was not "excessive force" under the Eighth Amendment because it is not alleged to have caused plaintiff any pain or injury. In short, the allegations in the complaint fall well short of stating a claim under § 1983 for a violation of the Eighth Amendment because this incident is not the sort of "unnecessary and wanton infliction of pain" the Eighth Amendment prohibits. See Whitley, 475 U.S. at 319. Careful consideration of the factors set forth by our Court of Appeals lend further support to this conclusion. See Smith, 293 F.3d at 649.

Because plaintiff's allegations against defendant Cox (and the other defendants) are insufficient to state a claim under 42 U.S.C. § 1983 for a violation of the Eighth Amendment, we will grant defendants' motion and dismiss the complaint.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JALIL A. RASHEED	:	CIVIL ACTION
	:	
v.	:	
	:	
LANE COX, et al.	:	NO. 06-5017

ORDER

AND NOW, this 3rd day of May, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that motion of the defendants to dismiss the complaint is GRANTED.

BY THE COURT:

/s/ Harvey Bartle III
C.J.